



records in their possession, including without limitation handwritten notes, related to any of the Plaintiff-Intervenors in this case. Leoplace may re-depose these therapists in connection with these medical records within a reasonable time, but may not re-depose Plaintiff-Intervenors.

Ms. Holbrook's counselor began counseling her in April of 2006. Declaration of Tim Roberts ("Roberts Dec."), ¶ 2, Exhibit 1. He testified that he saw Ms. Holbrook "16 or 17 times" in and after April of 2006. Roberts Dec., ¶ 2.

When the therapists purported to comply with the court's order on September 20, 2007, Ms. Holbrook's counselor produced no handwritten notes related to his treatment of Ms. Holbrook. Roberts Dec., ¶¶ 3, 4. At his re-noticed deposition on October 22<sup>nd</sup>, 2007, Ms. Holbrook's counselor admitted that he had therapy records in his possession that he generated as a result of his treatment of Ms. Holbrook that he had not produced in response to the court's order of September 12, 2007. *Id.* That is, they were withheld.

The court agreed at the August 29, 2007 hearing on Leoplace's motion to compel that in the event Plaintiff-Intervenors failed to turn over all subpoenaed records in response to a court order, it might very well be appropriate to dismiss their emotional distress claims at that time. This is why the court's order provided:


Leoplace's alternative motion to preclude emotional distress claims is premature and is therefore denied without prejudice.

Leoplace has tried everything in its legal power to obtain Plaintiff-Intervenors' therapy records, which are vital to its defense. It has been thwarted time and again. The court needs to send a message to litigants who invoke the jurisdiction of the Federal District Court of Guam that court-authorized discovery requests, court-issued subpoenas, and court orders compelling the

production of documents mean something. Plaintiff-Intervenor Jennifer Holbrook's emotional distress claims should be dismissed with prejudice.

Dated this 22<sup>nd</sup> day of October, 2007.

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By   
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